SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1964~~ 1965

No. ~~835~~ 48

ANNIE E. HARPER, ET AL., APPELLANTS,

vs.

VIRGINIA STATE BOARD OF ELECTIONS, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA ALEXANDRIA DIVISION

Civil Action No. 3253

ANNIE E. HARPER, ET AL., Plaintiffs,

vs.

VIRGINIA STATE BOARD OF ELECTIONS, ET AL., Defendants.

ORDER PERMITTING PLAINTIFFS TO FILE IN FORMA PAUPERIS —March 17, 1964

It is ordered that Annie E. Harper, Gladys A. Berry, Curtis Burr and Myrtle L. Burr be, and they hereby are, permitted to commence and prosecute this action against Virginia State Board of Elections, Electoral Board of Fairfax County, and Waneta M. Buckley, General Registrar of Fairfax County, in forma pauperis, without being required to prepay costs or fees or to give security therefor.

Dated this 17 day of March 1964.

Oren R. Lewis, United States District Judge.

[fol. 2] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

Civil Action No. 3253

ANNIE E. HARPER, Route 1, Box 28, Alexandria (Fairfax County), Virginia, GLADYS A. BERRY, Route 1, Box 30, Alexandria (Fairfax County), Virginia, CURTIS BURR and MYRTLE L. BURR, 840 Quander Road, Alexandria (Fairfax County), Virginia, on behalf of themselves and other similarly situated, Plaintiffs,

vs.

VIRGINIA STATE BOARD OF ELECTIONS, Richmond, Virginia, ELECTORAL BOARD OF FAIRFAX COUNTY, Fairfax, Virginia, WANETA M. BUCKLEY, General Registrar of Fairfax County, Fairfax, Virginia, Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF—Filed March 17, 1964

1. Jurisdiction of this Court is invoked under the Fourteenth Amendment to the United States Constitution, Title 42, United States Code, Section 1983, and Title 28, United States Code, Sections 1343(3), 2201 and 2202.

2. This is a class action brought by plaintiffs, on behalf of themselves and others similarly situated, for the purpose of having declared unconstitutional, and to enjoin enforcement of, the provisions of the Constitution and statutes of Virginia which have the effect of requiring payment of poll taxes as a condition of registering and voting in non-Federal elections in that State; although the constitutional and statutory provisions challenged by plaintiffs, in view of the ratification of the Twenty-fourth Amendment to the United States Constitution, do not apply to elections of Federal

officials, they still apply to State and local elections in Virginia; the provisions in issue are contained in Sections 18, [fol. 3] 20, 21 and 38 of the State Constitution, and Sections 24-17, 24-22, 24-67 and 24-120, Code of Virginia of 1950, as amended.

3. Plaintiffs Annie E. Harper, Gladys A. Berry, Curtis Burr and Myrtle L. Burr are citizens of the United States and residents of Virginia, who desire to register and vote in non-Federal elections in that State, and possess all of the necessary qualifications to do so, except that they lack the financial means to pay necessary poll taxes as required by the aforesaid provisions of the Constitution and statutes of Virginia.

4. Defendant Virginia State Board of Elections is an official governmental body organized under the laws of the Commonwealth of Virginia, which, in the exercise of governmental authority, is responsible for supervising and coordinating the administration and execution of the election laws of that State.

5. Defendant Electoral Board of Fairfax County is an official governmental body organized under the laws of the Commonwealth of Virginia, which in the exercise of governmental authority, is responsible in Fairfax County for supervising and coordinating the administration and execution of the election laws of that State.

6. Defendant Waneta M. Buckley, General Registrar of Fairfax County, is a duly elected or appointed governmental official who, in the exercise of governmental authority, is charged with adherence to, and the enforcement, execution and administration of the election laws of the Commonwealth of Virginia.

7. Plaintiff Annie E. Harper is single; she formerly supported herself principally by doing household or domestic work; at present her sole regular income is derived from Federal social security benefits. Plaintiff Harper, because she has been a resident of Virginia for more than three

years, and has never paid poll taxes is required by the aforesaid provisions of the Constitution and statutes of Virginia to pay three years' back poll taxes, plus a penalty of 5 percent, or a total of $4.74, in order to register and qualify to vote in non-Federal elections in Virginia.

8. Plaintiff Gladys A. Berry is single; she is not gain- [fol. 4] fully employed and has no regular income; she provides day care for seven minor children, two of whom are her own and five of whom are the children of her two married daughters; both daughters are separated from their husbands and do household or domestic work to support themselves, plaintiff Berry, and said seven minor children. Plaintiff Berry, because she has been a resident of Virginia for more than three years, and has never paid poll taxes, is required by the aforesaid provisions of the Constitution and statutes of Virginia to pay three years' back poll taxes, plus a penalty of 5 percent, or a total of $4.74, in order to register and qualify to vote in non-Federal elections in Virginia.

9. Plaintiff Curtis Burr works in the building and construction industry which is characterized by irregular employment because of weather conditions; in calendar 1963 his gross income derived from his employment was less than $5,000; plaintiff Curtis Burr's income is entirely consumed in providing the necessities of life for his wife, plaintiff Myrtle L. Burr, and their nine children. Although plaintiff Curtis Burr paid his poll taxes for 1961 and 1962, he has not paid them for 1963, and does not expect to be able to pay them hereafter because of the low earnings received from his employment and the increasing cost of supporting his family, particularly as his children grow older. The annual poll tax in Virginia is $1.50, plus 5 percent penalty for late payments or a total of $1.58, and in any year, in order for plaintiff Curtis Burr to register and vote in a non-Federal election in Virginia, it will be necessary for him to have paid three years' back poll taxes, plus penalties.

10. Plaintiff Myrtle L. Burr is supported by her husband, plaintiff Curtis Burr, whose annual income of less than $5,000 is entirely consumed in providing the necessities of life for himself, his wife, plaintiff Myrtle L. Burr, and their nine children. Plaintiff Myrtle L. Burr, because she has been a resident of Virginia for more than three years, and has never paid poll taxes, is required by the aforesaid provisions of the Constitution and statutes of Virginia to pay three years' back poll taxes, plus a penalty of 5 percent, or a total of $4.74, in order to register and qualify to vote in non-Federal elections in Virginia.

[fol. 5] 11. Each of the plaintiffs is unable, solely because of his poverty, to pay poll taxes required by Virginia law, and is thereby prevented from registering and voting in non-Federal elections in that State.

12. Plaintiffs are Negroes, and they here represent not only themselves, but other persons as well, both Negro and white, whose lives are characterized by poverty and deprivation to such a degree that they cannot afford to pay money for other than food, clothing, housing, medical care, and other absolute necessities of life; among those included in the class represented by plaintiffs are many unemployed persons, and persons employed in low paying jobs, as well as recipients of public welfare payments, social security benefits, unemployment compensation and retirement pensions, as well as other persons variously referred to as indigents and paupers.

13. Plaintiffs and others in the class described in paragraph 10 hereof are deprived, solely because of their poverty, of the elective franchise in non-Federal elections in Virginia, and they are thereby discriminated against in favor of persons of greater financial resources.

14. The discrimination that Virginia's election laws effect against poverty stricken residents of that State is revealed not only in the poll tax provisions of the State's Constitution and statutes, but also in Section 23 of the State Constitution and Section 24-18, Code of Virginia of 1950, as

amended, which specifically prohibit "paupers" from registering and voting, even if they are otherwise qualified.

15. The provisions of the Constitution and statutes of the State of Virginia specified in paragraph 2 hereof, which have the effect of requiring payment of poll taxes as a condition of registering and voting in Virginia, discriminate against plaintiffs and others similarly situated, depriving them of their rights under the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States, and are therefore unconstitutional and void.

[fol. 6] 16. Defendants, by engaging in the enforcement, execution and administration of the provisions of the Constitution and statutes of Virginia specified in paragraph 2 hereof, have deprived and will continue to deprive, unless restrained, plaintiffs and others similarly situated of their rights under the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States.

17. The damage and injury done to plaintiffs by reason of their being deprived of the foregoing rights is continuing and irreparable, and there is no adequate remedy at law.

WHEREFORE, plaintiffs pray that this Court:

A. Convene a statutory court of three judges pursuant to Title 28, United States Code, Section 2284, for the purpose of hearing and determining this cause.

B. Adjudge and declare to be in violation of the Constitution of the United States, and therefore void, all provisions of the Constitution and statutes of Virginia which have the effect of requiring payment of poll taxes as a condition of registering and voting in elections in that State.

C. Issue a preliminary and a permanent injunction

(1) Restraining and preventing defendants, their agents, servants, and employees and all other persons in active

concert with them who receive actual notice of the order of the Court by personal service or otherwise from enforcing, executing, administering, or in any manner giving effect to, the provisions of the Constitution and statutes of Virginia which have the effect of requiring payment of poll taxes a condition of registering and voting in elections in that State.

(2) Directing defendant Virginia State Board of Elections (a) to notify those governmental officials and governmental boards and bodies of the Commonwealth of Virginia, the activities of which said defendant is authorized by law to supervise, direct, or coordinate, that the provisions of the Constitution and statutes of Virginia which have the effect of requiring payment of poll taxes as a condition of registering and voting in elections in that State are unconstitutional and void, and (b) to instruct [fol. 7] said governmental officials and governmental boards and bodies to cease enforcing, executing, administering or in any manner giving effect to, the provisions of the Constitution and statutes of Virginia which have the effect of requiring payment of poll taxes as a condition of registering and voting in elections in that State.

D. Grant plaintiffs such other and further relief as may be just and equitable in the premises.

Philip Schwartz

Lawrence Speiser, c/o American Civil Liberties Union and National Capital Area Civil Liberties Union, Suite 803, 1101 Vermont Avenue, Washington 5, D. C.;

Allison W. Brown, Jr., Suite 705, 1000 Connecticut Avenue, Washington 6, D. C.;

Philip Schwartz, 2054 14th Street, North, Arlington, Virginia; Attorneys for Plaintiffs.

Commonwealth of Virginia,
County of Fairfax, ss.:

Annie E. Harper, being duly sworn, deposes and says that she resides at Route 1, Box 28, Alexandria (Fairfax County), Virginia; that she has read the foregoing complaint and knows the contents thereof and that the same are true to her knowledge except as to the matters therein imparted to her by others, and as to those matters she believes them to be true.

Annie E. Harper

Subscribed and sworn to before me this 14th day of March, 1964.

Wells A. Proctor, Notary Public. My Commission Expires April 1, 1967.

[fol. 8]

Commonwealth of Virginia,
County of Fairfax, ss.:

Gladys A. Berry, being duly sworn, deposes and says that she resides at Route 1, Box 30, Alexandria (Fairfax County), Virginia; that she has read the foregoing complaint and knows the contents thereof and that the same are true to her knowledge except as to the matters therein imparted to her by others, and as to those matters she believes them to be true.

Gladys A. Berry

Subscribed and sworn to before me this 14th day of March, 1964.

Wells A. Proctor, Notary Public. My Commission Expires April 1, 1967.

Commonwealth of Virginia,
County of Fairfax, ss.:

Curtis Burr, being duly sworn, deposes and says that he resides at 840 Quander Road, Alexandria (Fairfax County),

Virginia; that he has read the foregoing complaint and knows the contents thereof and that the same are true to his knowledge except as to the matters therein imparted to him by others, and as to those matters he believes them to be true.

Curtis Burr

Subscribed and sworn to before me this 14th day of March, 1964.

Wells A. Proctor, Notary Public. My Commission Expires April 1, 1967.

[fol. 9]

Commonwealth of Virginia,
County of Fairfax, ss.:

Myrtle L. Burr, being duly sworn, deposes and says that she resides at 840 Quander Road, Alexandria (Fairfax County), Virginia; that she has read the foregoing complaint and knows the contents thereof and that the same are true to her knowledge except as to the matters therein imparted to her by others, and as to those matters she believes them to be true.

Myrtle L. Burr

Subscribed and sworn to before me this 14th day of March, 1964.

Wells A. Proctor, Notary Public. My Commission Expires April 1, 1967.

[fol. 10] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

Civil Action No. 3253

IN THE MATTER OF THE APPLICATION OF GLADYS A. BERRY FOR LEAVE TO SUE IN FORMA PAUPERIS—Filed March 17, 1964

United States of America,
Eastern District of Virginia,
County of Fairfax, ss.:

Gladys A. Berry, being duly sworn, deposes and says: I am entitled to and intend to commence a civil action in this Court against Virginia State Board of Elections, Electoral Board of Fairfax County and Waneta M. Buckley, General Registrar of Fairfax County. The nature of said action is to have declared unconstitutional, and to enjoin enforcement of, the provisions of the Constitution and statutes of Virginia which have the effect of requiring payment of poll taxes as a condition of registering and voting in non-Federal elections in that State. I believe that I am entitled to the redress sought in said action because, as more fully shown by the complaint filed herewith, the Constitution and statutes of Virginia, which deny to persons otherwise fully qualified the right to vote because they do not have the economic means to pay the poll tax, violate the United States Constitution. Because of my poverty, I am unable to pay the costs of said action or to give security therefor and to provide myself with the necessities of life.

Wherefore, affiant prays that she may have leave to prosecute said action in forma pauperis, pursuant to Title 28, United States Code, Section 1915.

Gladys A. Berry

Subscribed and sworn to before me this 14th day of March, 1964.

Wells A. Proctor, Notary Public. My Commission Expires April 1, 1967.

[fol. 11] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

Civil Action No. 3253

IN THE MATTER OF THE APPLICATION OF CURTIS BURR FOR LEAVE TO SUE IN FORMA PAUPERIS—Filed March 17, 1964

United States of America,
Eastern District of Virginia,
County of Fairfax, ss.:

Curtis Burr, being duly sworn, deposes and says: I am entitled to and intend to commence a civil action in this Court against Virginia State Board of Elections, Electoral Board of Fairfax County and Waneta M. Buckley, General Registrar of Fairfax County. The nature of said action is to have declared unconstitutional, and to enjoin enforcement of, the provisions of the Constitution and statutes of Virginia which have the effect of requiring payment of poll taxes as a condition of registering and voting in non-Federal elections in that State. I believe that I am entitled to the redress sought in said action because, as more fully shown by the complaint filed herewith, the Constitution and statutes of Virginia, which deny to persons otherwise fully qualified the right to vote because they do not have the economic means to pay the poll tax, violate the United States Constitution. Because of my poverty, I am unable to pay the costs of said action or to give security therefor and to provide myself with the necessities of life.

Wherefore, affiant prays that he may have leave to prosecute said action in forma pauperis, pursuant to Title 28, United States Code, Section 1915.

CURTIS BURR

Subscribed and sworn to before me this 14th day of March, 1964.

Wells A. Proctor, Notary Public. My Commission Expires April 1, 1967.

[fol. 12] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

Civil Action No. 3253

IN THE MATTER OF THE APPLICATION OF MYRTLE L. BURR FOR LEAVE TO SUE IN FORMA PAUPERIS—Filed March 17, 1964

United States of America,
Eastern District of Virginia,
County of Fairfax, ss.:

Myrtle L. Burr, being duly sworn, deposes and says: I am entitled to and intend to commence a civil action in this Court against Virginia State Board of Elections, Electoral Board of Fairfax County and Waneta M. Buckley, General Registrar of Fairfax County. The nature of said action is to have declared unconstitutional, and to enjoin enforcement of, the provisions of the Constitution and statutes of Virginia which have the effect of requiring payment of poll taxes as a condition of registering and voting in non-Federal elections in that State. I believe that I am entitled to the redress sought in said action because, as more fully shown by the complaint filed herewith, the Constitution and statutes of Virginia, which deny to persons otherwise fully

qualified the right to vote because they do not have the economic means to pay the poll tax, violate the United States Constitution. Because of my poverty, I am unable to pay the costs of said action or to give security therefor and to provide myself with the necessities of life.

Wherefore, affiant prays that she may have leave to prosecute said action in forma pauperis, pursuant to Title 28, United States Code, Section 1915.

MYRTLE L. BURR

Subscribed and sworn to before me this 14th day of March, 1964.

Wells A. Proctor, Notary Public. My Commission Expires April 1, 1967.

[fol. 13] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

Civil Action No. 3253

IN THE MATTER OF THE APPLICATION OF ANNIE E. HARPER FOR LEAVE TO SUE IN FORMA PAUPERIS—Filed March 17, 1964

United States of America,
Eastern District of Virginia,
County of Fairfax, ss.:

Annie E. Harper, being duly sworn, deposes and says: I am entitled to and intend to commence a civil action in this Court against Virginia State Board of Elections, Electoral Board of Fairfax County and Waneta M. Buckley, General Registrar of Fairfax County. The nature of said action is to have declared unconstitutional, and to enjoin enforcement of, the provisions of the Constitution and statutes of Virginia which have the effect of requiring payment of

poll taxes as a condition of registering and voting in non-Federal elections in that State. I believe that I am entitled to the redress sought in said action because, as more fully shown by the complaint filed herewith, the Constitution and statutes of Virginia, which deny to persons otherwise fully qualified the right to vote because they do not have the economic means to pay the poll tax, violate the United States Constitution. Because of my poverty, I am unable to pay the costs of said action or to give security therefor and to provide myself with the necessities of life.

Wherefore, affiant prays that she may have leave to prosecute said action in forma pauperis, pursuant to Title 28, United States Code, Section 1915.

ANNIE E. HARPER

Subscribed and sworn to before me this 14th day of March, 1964.

Wells A. Proctor, Notary Public. My Commission Expires April 1, 1967.

[fol. 18] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

AT ALEXANDRIA

Civil Action No. 3253

[Title omitted]

PRE-TRIAL ORDER—April 2, 1964

The defendants herein are directed to file their respective answers, if not already filed, together with such additional pleadings as they deem proper, on or before April 20, 1964.

The taking of pre-trial depositions, the filing of interrogatories, requests for admissions, and other pre-trial procedures should be concluded on or before June 1, 1964. No

additional motions, other pleadings or further pre-trial procedures may be filed or indulged in after June 1, 1964, except by leave of Court for good cause shown.

All proposed exhibits and names and addresses of all witnesses who may be called to testify should be filed with the Clerk of this Court (in Alexandria) on or before July 1, 1964. If the exhibits are voluminous, they should be marked by the Clerk at least two days prior to the date of trial. Formal proof of exhibits will be deemed waived un-
[fol. 19] less objected to in writing seven days prior to the date of trial. Copies of all exhibits, lists of witnesses and briefs should be mailed to all parties of record and the members of the Three-Judge Court at their respective addresses.

Hearing on all motions, unless otherwise ordered by the Court, will be deferred until the date of the hearing on the merits.

Plaintiffs' briefs should be filed on or before August 1, 1964. Defendants' briefs should be filed on or before September 1, 1964. Plaintiffs' reply brief, if any, should be filed on or before September 10, 1964.

The date for the hearing of this case upon the merits will be deferred until after another Three-Judge Court of this District renders its decision in similar cases now pending before it, at which time the Court will fix the date for the hearing of the above-styled matter.

The Clerk will forthwith mail copies of this pre-trial order to all counsel of record.

At Alexandria
April 2, 1964

/s/ Oren R. Lewis
United States District Judge

[fol. 22] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

Civil Action No. 3253

[Title omitted]

ANSWER—Filed April 9, 1964

In answer to the complaint filed herein against the Electoral Board of Fairfax County, Virginia, Waneta M. Buckley, General Registrar of Fairfax County and others, the Defendants said Electoral Board and Waneta M. Buckley, respectively, by their counsel, state as follows:

1. That the Electoral Board of Fairfax County and Waneta M. Buckley, General Registrar of Fairfax County, adopt as their answer and defense to the complaint and other pleadings, present and future, filed herein, any and all answers and defensive pleadings, present and future, filed and to be filed by the Attorney General of the Commonwealth of Virginia for and on behalf of the Board of Elections of the Commonwealth of Virginia.

And having thus fully answered, they pray to be thus dismissed with cost to Plaintiff.

Electoral Board of Fairfax County, Waneta M. Buckley, General Registrar, Fairfax County, Virginia, By Donald C. Crounse, Counsel.

Ralph G. Louk, Commonwealth's Attorney, Fairfax County, Virginia, Counsel for Defendant.

Donald C. Crounse, Ass't Commonwealth's Attorney, Fairfax County, Virginia, Counsel for Defendant.

[fol. 23] Certificate of Service (omitted in printing).

[fol. 24] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
At Alexandria
Civil Action No. 3253
[Title omitted]

MOTION TO DISMISS—Filed April 13, 1964

Now comes the defendant, the Virginia State Board of Elections, by counsel, and moves the Court to dismiss this action for the following reasons:

1. The Treasurer of Fairfax County, Virginia and the Clerk of the Circuit Court of Fairfax County, Virginia are charged by the Constitution and laws of Virginia with certain duties in the administration and conduct of elections and, therefore, are indispensable parties not within the jurisdiction of this Court and without whom the relief prayed for in the Complaint cannot be granted;

2. The complainants lack the capacity and standing to bring this suit;

3. The Court lacks jurisdiction over the persons and over the subject matter;

[fol. 25] 4. The complaint fails to state a claim upon which relief can be granted.

This Motion is based upon the pleadings and exhibits on file and to be filed in this action and the authorities attached hereto.

Virginia State Board of Elections, By: Richard N. Harris, Counsel.

Robert Y. Button, Attorney General of Virginia, Supreme Court—State Library Building, Richmond, Virginia 23219.

Richard N. Harris, Assistant Attorney General, Supreme Court—State Library Building, Richmond, Virginia 23219.

Certificate of Service (omitted in printing).

[fol. 26]

ATTACHMENT TO MOTION TO DISMISS

Authorities Relied upon in Support of this Motion:

CONSTITUTIONAL PROVISIONS:

Constitution of Virginia, Sections 23, 38, 173

STATUTORY PROVISIONS:

Title 24, Code of Virginia, 1950, as amended

TEXTS:

Barron and Holtzoff on *Federal Practice and Procedure*, Volume 2, Sections 514 and 515

FEDERAL RULES OF CIVIL PROCEDURE:

Rule 12

CASES:

Jeffers v. *Whitley*, 165 F. Supp. 951 (M.D. N.C. 1958)
Covington v. *Edwards*, 264 F. 2d 780 (4th Cir. 1959)
Opinion of the Justices to the Senate, 28 Mass. 538, 11 Pick. 538 (1832)
Opinion of the Justices to the House, 7 Me. 497 (1831)
Alleghany County v. *City of Pittsburgh*, 281 Pa. 300, 127 A. 724 (1924)
Estate of Hoffen, 70 Wis. 522, 36 N.W. 407 (1888)
Lee County v. *Lackie*, 30 Ark. 764 (1875)
Hutchings v. *Thompson*, 10 Cush. 238 (Mass. 1852)

Breedlove v. *Suttles*, 302 U.S. 277, 58 S. Ct. 205, 82 L. Ed. 252 (1937)

Butler v. *Thompson*, 97 F. Supp. 17 (E.D. Va. 1951), aff'md *per curiam* 341 U.S. 937, 71 S. Ct. 1002, 95 L. Ed. 919

[fol. 27] *Saunders* v. *Wilkins*, 152 F. 2d 235 (4th Cir. 1945), cert. den. 328 U.S. 870, 66 S. Ct. 1362, 90 L. Ed. 1640

Pirtle v. *Brown*, 118 F. 2d 218 (6th Cir. 1941), cert. den. 314 U.S. 621, 62 S. Ct. 64, 86 L. Ed. 499

Wheeler v. *State*, 219 Miss. 129, 63 So. 2d 517 (1953), app. dism'd. and cert. den. 346 U.S. 852, 74 S. Ct. 67, 98 L. Ed. 367, reh. den. 346 U.S. 905, 74 S. Ct. 216, 98 L. Ed. 404

Thomas v. *Chamberlain*, 143 F. Supp. 671 (E. D. Tenn. 1955), affm'd. *per curiam* 236 F. 2d 417

Hewitt v. *City of Jacksonville*, 188 F. 2d 423 (5th Cir. 1951), cert. den. 342 U.S. 835, 72 S. Ct. 58, 96 L. Ed. 631

[fol. 28] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

AT ALEXANDRIA

Civil Action No. 3253

[Title omitted]

ANSWER OF THE DEFENDANT, VIRGINIA STATE BOARD OF ELECTIONS—Filed April 20, 1964

First Defense

The complaint fails to state a claim against this defendant upon which relief can be granted.

Second Defense

The plaintiffs have no right to bring this suit *in forma pauperis.*

Third Defense

In the alternative, this defendant alleges and avers that the plaintiffs lack the capacity and standing to bring this suit.

Fourth Defense

This Court lacks jurisdiction over the persons and over the subject matter of this action.

[fol. 29] Fifth Defense

1. This defendant denies that this Court has jurisdiction under any of the articles, sections, amendments, titles or code sections cited in paragraph (1) of the complaint.

2. This defendant admits that Amendment XXIV of the United States Constitution applies only to federal elections and not to State elections, but denies that the provisions of the Constitution of Virginia and of the Code of Virginia cited by the plaintiff in paragraph (2) apply only to state and local elections and not to elections of Federal officials. This defendant avers that only in so far as these provisions of the Constitution and Code of Virginia have been affected by Amendment XXIV of the United States Constitution do they not apply to Federal elections. Further, this defendant avers that the provisions of the Constitution and Code of Virginia speak for themselves. It is averred that the remainder of paragraph (2) does not require an answer.

3. This defendant is without information sufficient to form a belief as to the truth or falsity of the averments of paragraph (3) of the complaint.

4. This defendant admits the averments of paragraphs (4), (5) and (6) of the complaint.

5. This defendant is without information sufficient to form a belief as to the truth or falsity of the averments in paragraphs (7), (8), (9) and (10) of the complaint, and avers that the Constitution and laws of Virginia speak for themselves relative to registration and qualification for voting in this State.

[fol. 30] 6. This defendant is without information sufficient to form a belief as to the truth or falsity of the averments in paragraphs (11) and (12) of the complaint.

7. This defendant denies the averments of paragraphs (13), (14), (15), (16) and (17) of the complaint.

Wherefore, said defendant demands that this Court refuse to grant any of the prayers of the plaintiffs and further demand that this action against it be dismissed with costs herein incurred paid by the plaintiffs.

Virginia State Board of Elections, By: Richard N. Harris, Counsel.

Robert Y. Button, Attorney General of Virginia, Supreme Court—State Library Building, Richmond, Virginia 23219.

Richard N. Harris, Assistant Attorney General, Supreme Court—State Library Building, Richmond, Virginia 23219.

Certificate of Service (omitted in printing).

[fol. 31] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION
Civil Action No. 3253

[Title omitted]

MOTION FOR LEAVE TO AMEND COMPLAINT—
Filed May 26, 1964

Plaintiffs move the Court for leave to amend their complaint on file herein in the following particulars:

1. Adding a Subparagraph (a) to Paragraph 2 to read as follows:

> (a) Plaintiffs further seek to have declared unconstitutional, and to enjoin enforcement of, Section 23 of the Constitution of Virginia and Section 24-18 of the Code of Virginia of 1950, as amended, insofar as they specify "paupers" among the classes of persons disqualified from registering and voting in Virginia.

2. Adding to Paragraph 15, between the second clause of the sentence and the comma immediately following it, the following: "and which prohibit 'paupers' from registering and voting."

3. Adding to Paragraphs B, C(1), C(2)(a) and C(2)(b) of the Prayer, by inserting after the word "voting" where it appears in each of said paragraphs, the following: ", and which prohibit 'paupers' from registering and voting,".

[fol. 32] The grounds of this motion are that justice so requires, and in order that the important constitutional issue involved in this proceeding be fully litigated.

Philip Schwartz, Esquire.

Lawrence Speiser, Esquire, c/o American Civil Liberties Union & National Capital Area Civil Liberties Union, Suite 803, 1101 Vermont Avenue, Washington 5, D. C.

Allison W. Brown, Jr., Esquire, Suite 705, 1000 Connecticut Avenue, Washington 6, D. C.

Philip Schwartz, Esquire, 2054 14th Street, North, Arlington, Virginia.

Certificate of Service (omitted in printing).

[fol. 38] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

AT ALEXANDRIA

Civil Action No. 3253

Alexandria Division

ANNIE E. HARPER, et al., Plaintiffs,

v.

VIRGINIA STATE BOARD OF ELECTIONS, et al., Defendants.

Civil Action No. 4658

Norfolk Division

MRS. EVELYN BUTTS, Plaintiff,

v.

ALBERTIS HARRISON, Governor, et al., Defendants.

ORDER GRANTING MOTION TO AMEND COMPLAINT AND ALSO SETTING DATE FOR HEARING ON THE MERITS, ETC.—June 9, 1964

It is Adjudged and Ordered that the motion of Annie E. Harper, et al., to amend their complaint in the manner

set forth in the motion filed May 26, 1964 is granted. The defendants may adopt as responsive pleadings to the amended complaint the pleadings that they have already filed. If they desire to file additional responsive pleadings to the amended complaint they may do so on or before July 10, 1964.

[fol. 39] It is Ordered that these cases are set for hearing upon the merits and upon all motions, including motions for summary judgment, on October 21, 1964 at 10:00 o'clock A.M., D.S.T., in the United States Courthouse, Alexandria, Virginia.

Let the Clerk mail copies of this order to all counsel of record.

John D. Butzner, Jr., United States District Judge.

June 9, 1964

[fol. 40] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
AT ALEXANDRIA
Civil Action No. 3253

[Title omitted]

ANSWER OF THE DEFENDANT, VIRGINIA STATE BOARD OF ELECTIONS, TO THE AMENDED COMPLAINT—Filed June 29, 1964

Comes now the defendant, Virginia State Board of Elections, by counsel, and adopts as its responsive pleadings to the Amended Complaint the Motion to Dismiss and the Answer it has already filed, amending, however, the Fifth Defense, paragraph 2, of the Answer to read as follows:

Fifth Defense

2. This defendant admits that Amendment XXIV of the United States Constitution applies only to Federal elections and not to State elections, but denies that the provisions of the Constitution of Virginia and of the Code of Virginia cited by the plaintiff in paragraph 2 apply only to state and local elections and not to elections of Federal officials. This defendant avers that only in so far as these provisions of the Constitution and Code of Virginia have been affected by Amendment XXIV of the United States [fol. 41] Constitution do they not apply to Federal elections. Further, this defendant avers that the provisions of the Constitution and Code of Virginia cited by the plaintiff speak for themselves and are valid, constitutional and enforceable. It is averred that the remainder of paragraph 2 does not require an answer.

Virginia State Board of Elections, By: Richard N. Harris, Counsel.

Robert Y. Button, Attorney General of Virginia, Supreme Court—State Library Building, Richmond, Virginia 23219.

Richard N. Harris, Assistant Attorney General, Supreme Court—State Library Building, Richmond, Virginia 23219.

Certificate of Service (omitted in printing).

[fol. 57]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION
Civil Action No. 3253

ANNIE E. HARPER, et al., Plaintiffs,

v.

VIRGINIA STATE BOARD OF ELECTIONS, et al., Defendants.

Civil Action No. 3346

MRS. EVELYN BUTTS, Plaintiff,

v.

ALBERTIS HARRISON, Governor, et al., Defendants.

Courtroom No. 1,
U. S. Post Office
and Courthouse
Alexandria, Virginia

Transcript of Hearing—October 21, 1964

Met, pursuant to notice, at 10:00 o'clock a. m.

Before: Honorable Albert V. Bryan, Circuit Judge, Honorable Oren R. Lewis, District Judge, Honorable John D. Butzner, Jr., District Judge.

[fol. 58] APPEARANCES:

J. A. Jordan, Jr., Norfolk, Virginia, Len W. Holt, Washington, D. C., and Max Dean and Robert L. Segar, both of

Flint, Michigan, counsel for plaintiffs in No. 3346; and Ira M. Lechner and Allison W. Brown, Jr., both of Washington, D. C., and Philip Schwartz, Arlington County, Virginia, counsel for plaintiffs in No. 3253.

Robert Y. Button, Attorney General of Virginia, and Richard N. Harris, Assistant Attorney General of Virginia, both of Richmond, Virginia, counsel for defendants Virginia State Board of Elections in No. 3253 and counsel for Albertis Harrison, Governor, in No. 3346, Donald C. Crounse, Assistant Commonwealth's Attorney, Fairfax County, Virginia, counsel for Electoral Board of Fairfax County and Waneta M. Buckley, General Registrar of Fairfax County, Virginia, in No. 3253, Alfred W. Whitehurst, Commonwealth's Attorney, City of Norfolk, Norfolk, Virginia, counsel for Mary Dudley, City Registrar, City of Norfolk, Alex H. Bell, City Treasurer, City of Norfolk, and William Prieur, Clerk, The Corporation Court, City of Norfolk, all of Norfolk, Virginia, in No. 3346.

[fol. 59]

ORAL ARGUMENT IN BEHALF OF THE DEFENDANTS BY RICHARD N. HARRIS, ESQUIRE, ASSISTANT ATTORNEY GENERAL

Mr. Harris:

* * * * * * *

[fol. 62] Now, with reference to the complaints themselves, in the Harper complaint we find this paragraph:

"Plaintiffs are Negroes, and they here represent not only themselves, but other persons as well, both Negro and white, whose lives are characterized by poverty and deprivation to such a degree that they cannot afford to pay money for other than food, clothing, housing, medical care, and other absolute necessities of life; among those included in the class represented by plaintiffs are many unemployed persons, and persons employed in low paying jobs, as well as recipients of public welfare payments, social secuity benefits, unemployment compensation and retirement pensions, as well as other persons variously referred to as indigents and paupers."

If that isn't an allegation under oath of somebody being poor, I don't know what it is, and to my definition, in my definition, "poor" is being a pauper, as that word is used in Section—

[fol. 63] Judge Butzner: Do you mean every poor person is excluded from voting and could be challenged in Virginia?

Mr. Harris: Yes, sir. I believe exactly what Section 23 of the Constitution says.

Judge Butzner: And that the regular procedures for challenging are available for that.

Mr. Harris: Yes, sir.

• • • • • • •

[fol. 64] Judge Lewis: He can challenge him. Can he do it successfully, in your opinion?

Mr. Harris: That is what I was getting ready to comment on. The word "pauper", the definition of the word "pauper" is what we are dealing with here. What does the word "pauper" mean as it is used in the Virginia Constitution? Now, your question would have to be answered in that sense, what is a pauper as that word is used, and, in my brief, I attempt to show in what sense I think the word "pauper" has, as used and is being used in the Virginia Constitution.

Now, again, these gentlemen have used the Federal figure of what a pauper is, at least some of them have. The other side seems to disagree because they make allegation that their plaintiffs earn more than the $3,000 that President Johnson seems to think is the median figure. But you are dealing here with the definition of the word "pauper" in the Virginia Constitution, and I would have to answer Judge Lewis' question and Judge Butzner's question in terms of what does that word mean. You can challenge it, but the question is, who is the pauper after you make the challenge and how do you establish just what a pauper is. We are dealing here with a pauper in the sense of the use of that word in Section 23.

• • • • • • •

[fol. 65] Now, I am saying, and my position really is, that just using the common sense definition of the word "pauper", somebody who doesn't own anything, these people have come in here and told you gentlemen that they do not own anything, that they own so little they can't afford to pay $1.50.

Judge Bryan: That is preliminary to my main concern, that is, the historical meaning of this "pauper". But how can you say, Mr. Harris, that he pleads himself out of court by pleading himself to be a pauper? Couldn't he still attack it, even if he were conceded to be a pauper?

Mr. Harris: How can you have standing to attack a poll tax and say that it, as a prerequisite to voting, denies me a Constitutional right when you are excluded from voting even if you can afford, even if everything you say is true? In other words, even if he wins, he can't vote.

Judge Bryan: You are addressing that argument to the poll tax part of this case—

Mr. Harris: That is right.

Judge Bryan: —and not to the pauper part.

Mr. Harris: That is right. Obviously, I am addressing it to their right to challenge the poll tax.

[fol. 66] Judge Bryan: The poll tax, but not the right to challenge the pauper position.

Mr. Harris: That is quite correct. * * * But, I am directing my remarks now solely and only to their right to challenge the poll tax, saying that even if they are successful in getting the poll tax declared unconstitutional, then they still would not be able to vote because they are paupers. Then, for that reason, they cannot possibly be plaintiffs who can achieve the result they want, and, therefore, they have no standing here. They are not persons who are qualified to vote in the first place, poll tax or no poll tax.

Judge Lewis: You do not think any court would construe everybody in the class referred to in this suit that is questioning the poll tax provision would be in the category of paupers as referred to in the Virginia Constitution, do you?

Mr. Harris: I am merely, sir, relying upon the allegations of the plaintiffs themselves in their complaint, which

is all I can do on a motion to dismiss. I have to rely on what they themselves say about themselves.

* * * * * * *

[fol. 68] Judge Butzner: Now, Mrs. Butts alleges, as you quote on page 15 of your brief, "Plaintiff is an adult Negro citizen of small financial means barely adequate to provide for the necessities of living." Now, that is describing her.

Mr. Harris: Yes, sir.

Judge Butzner: That, in your opinion, is a pauper; accepting all of that as true,—

Mr. Harris: Yes, sir.

Judge Butzner: —you say a person who meets that description cannot legally vote in Virginia?

Mr. Harris: Coupled with the affidavit in forma pauperis, yes, sir.

* * * * * * *

[fol. 69] Judge Bryan: The up-shot of your argument would be, as far as pauper, as opposed to the pauper provision is concerned—

Mr. Harris: Right.

Judge Bryan: —is that the plaintiff here has not brought [fol. 70] himself within the real, which is the historical, meaning of "pauper", and, therefore, is not in a position to attack that.

Mr. Harris: No, sir, my position is not that. My position is that the plaintiffs here are not in a position to attack the poll tax as being unconstitutional because they are excluded from voting because they are paupers.

* * * * * * *

[fol. 71] Judge Bryan: All right, sir.

Mr. Button, is there anything you want to say, sir?

Mr. Button: No, sir.

* * * * * * *

[fol. 72] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
AT ALEXANDRIA
Civil Action No. 3253

ANNIE E. HARPER, et al., Plaintiffs,

v.

VIRGINIA STATE BOARD OF ELECTIONS, et al., Defendants.

Civil Action No. 3346

MRS. EVELYN BUTTS, Plaintiff,

v.

ALBERTIS HARRISON, Governor, et al., Defendants.

(Argued October 21, 1964 Decided November 10, 1964.)

Before Bryan, Circuit Judge, and Lewis and Butzner, District Judges.

J. A. Jordan, Jr., Norfolk, Virginia, Len W. Holt, Washington, D. C., and Max Dean and Robert L. Segar, both of Flint, Michigan, counsel for plaintiffs in No. 3346; and Ira M. Lechner and Allison W. Brown, Jr., both of Washington, D. C. and Philip Schwartz, Arlington County, Virginia, counsel for plaintiffs in No. 3253.

Robert Y. Button, Attorney General of Virginia and Richard N. Harris, Assistant Attorney General of Virginia, both of Richmond, Virginia, counsel for defendants Virginia State Board of Elections in No. 3253 and counsel for Albertis Harrison, Governor, in No. 3346; Donald C. Crounse,

Assistant Commonwealth's Attorney, Fairfax County, Virginia, counsel for Electoral Board of Fairfax County and Waneta M. Buckley, General Registrar of Fairfax County, Virginia in No. 3253; Alfred W. Whitehurst, Commonwealth's Attorney, City of Norfolk, Norfolk, Virginia, counsel for Mary Dudley, City Registrar, City of Norfolk, Alex H. Bell, City Treasurer, City of Norfolk, and William Prieur, Clerk, the Corporation Court, City of Norfolk, all of Norfolk, Virginia in No. 3346.

[fol. 73]

OPINION PER CURIAM—November 10, 1964

Poll tax payment as a prerequisite to voting in State and local elections, exacted by the Constitution and statutes of Virginia,[1] is attacked in these two consolidated actions as violative of the no-abridgement and equal protection commands of the Federal Fourteenth Amendment. A corollary attack is made upon the provision of the State constitution excluding "paupers" as persons entitled to vote in any election.[2]

The common premise of the assaults is: that the plaintiffs are financially unable to pay the tax—$1.50 for each of the 3 preceding years for which the elector was assessable; and that they and other State citizens similarly impecunious are thereby deprived, solely on account of their poverty, of the privilege to vote, and at the same time they are also denied a privilege accorded other citizens not so poor.

Notwithstanding the plaintiffs' impoverishment and eligibility to vote, their denunciation of the State constitutional and statutory poll tax requirements has been squarely re-

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[1] Va. Constitution §§ 18, 20, 21 and 38; 1950 Code of Va. as amended §§ 24-17, 24-22, 24-67, and 24-120. The separation by race or color, as required in § 38 of the Va. constitution and § 24-120 of the Code of Virginia, in the listing of persons who have paid the poll taxes was declared invalid by this court in Hamm v. Virginia State Board of Elections, 230 F.Supp. 156, aff'd October 26, 1964, —— U.S. ——.

[2] Va. Constitution § 23; 1950 Code of Va. § 24-18, as amended.

futed by the Supreme Court in Breedlove v. Suttles, 302 U.S. 277, 283 (1937). We are not at liberty to deviate from that precept. There the Court considered arguments [fol. 74] akin to those of the plaintiffs here, including the economic factor, and rejected them. This court adhered to that precedent in Butler v. Thompson, 97 F. Supp. 17, 22 (1951), aff'd per curiam 341 U.S. 937. In this it adverted to the like holding of this Circuit in Saunders v. Wilkins, 152 F.2d 235, 237 (1945), cert. denied 328 U.S. 870, rehearing denied 329 U.S. 824, an appeal touching the Virginia constitutional and statutory clauses now questioned. The tax is levied upon every adult resident irrespective of his intent to vote.[3] Moreover, no racial discrimination is exhibited in its application as a condition to voting. Cf. Butler v. Thompson, *supra*, 97 F. Supp. 17, 21.

Adequate answer to the attack upon the exclusion of paupers is that this disqualification—apparently of early historical origin and prevalent in several States—has not been employed to prevent the plaintiffs or their class from voting. Plaintiffs do not essay a showing that they, or anyone else in destitute circumstances, have been designated "paupers" in the sense of the Virginia constitution. Therefore, an expression by us upon the meaning and implications of that term would be entirely academic and without place here.

The complaint in each of these cases will be dismissed.

Dismissed.

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[3] Va. Constitution § 173; Code of Va. § 58-49.

[fol. 75] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
AT ALEXANDRIA

Civil Action No. 3253

ANNIE E. HARPER, et al., Plaintiffs,

v.

VIRGINIA STATE BOARD OF ELECTIONS, et al., Defendants.

Civil Action No. 3346

MRS. EVELYN BUTTS, Plaintiff,

v.

ALBERTIS HARRISON, Governor, et al., Defendants.

FINAL ORDER—November 10, 1964

Upon consideration of the pleadings, the exhibits, the stipulations and other parts of the record in these cases, as well as the briefs and oral arguments of counsel, for reasons stated in the Court's written opinion this day filed, it is

Ordered that each of the said complaints be, and it is hereby, dismissed.

Albert V. Bryan, United States Circuit Judge, Oren R. Lewis, United States District Judge, John D. Butzner, Jr., United States District Judge.

November 10, 1964

[fol. 76] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION
Civil Action No. 3253

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed December 4, 1964

I. Notice is hereby given that Annie E. Harper, Gladys A. Berry, Curtis Burr and Myrtle L. Burr, plaintiffs in this cause, hereby appeal to the Supreme Court of the United States from the final order dismissing the complaint, entered in this action on November 10, 1964.

This appeal is taken pursuant to 28 U.S.C. Section 1253.

II. The Clerk will please prepare a transcript of record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Complaint filed March 17, 1964.
2. Application of Annie E. Harper for leave to sue in forma pauperis.
3. Application of Gladys A. Berry for leave to sue in forma pauperis.
4. Application of Curtis Burr for leave to sue in forma pauperis.
5. Application of Myrtle L. Burr for leave to sue in forma pauperis.
6. Order of the Court entered March 17, 1964 granting plaintiffs' applications to sue in forma pauperis.

[fol. 77] 7. Defendants' motion to dismiss filed April 13, 1964.

8. Defendants' answer filed April 20, 1964.

9. Plaintiffs' motion for leave to amend the complaint filed May 26, 1964.

10. Plaintiffs' motion for summary judgment filed May 26, 1964.

11. Order of the Court entered June 9, 1964 permitting amendment of the complaint and setting date for hearing on the merits and on all motions.

12. Defendants' answer to the amended complaint filed June 29, 1964.

13. Transcribed portions, on file in the Clerk's office, of the hearing before the Court on October 21, 1964, consisting of 54 pages.

14. Opinion of the Court entered November 10, 1964.

15. Final order of the Court dismissing the complaint entered November 10, 1964.

16. This notice of appeal.

II. The following questions are presented by this appeal:

A. Do provisions of Virginia law which require the payment of three years' cumulative poll taxes as a prerequisite to voting in state and local elections violate the Equal Protection clause of the Fourteenth Amendment by denying the franchise to paupers and indigents and other persons who are without economic means to pay the taxes, but who are otherwise qualified to vote?

B. Are plaintiffs who brought suit challenging the constitutionality of Virginia laws requiring payment of poll taxes as a prerequisite to voting in state and local elections on the ground that such requirement discriminatorily disenfranchises persons without the economic means to pay such taxes, and where the State asserts in defense that the plaintiffs are in-

eligible to vote because "paupers" are disqualified from voting under state law, entitled to seek and obtain a judicial determination that the "pauper" disqualification is invalid under the equal protection clause of the Fourteenth Amendment?

Philip Schwartz, 2054 14th Street, North, Arlington, Virginia.

[fol. 78] Certificate of Service (omitted in printing).

[fol. 79] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 80]

SUPREME COURT OF THE UNITED STATES

No. 835, October Term, 1964

ANNIE E. HARPER, et al., Appellants,

v.

VIRGINIA STATE BOARD OF ELECTIONS, et al.

Appeal from the United States District Court for the Eastern District of Virginia.

ORDER NOTING PROBABLE JURISDICTION—March 8, 1965

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.